

REMARKS

Claims 1-22, 24-28, 30-38, 40 and 44 are pending in the present case. Claims 39 and 41-43 have been previously cancelled. Claims 1, 16, 22, and 30 have been amended. The undersigned assumes that the CONCLUSION on page 27 of the Office Action stating that the Office Action is FINAL is a typographical error.

Claims 1-22, 24-28, 30-38, 40 and 44 are rejected. Claims 1, 16, 22 and 30 are rejected under 35 U.S.C. § 112, second paragraph. Claims 1-22, 24-28, and 30-44 are provisionally rejected on the ground nonstatutory obviousness-type double patenting over claims 1-36 of co-pending application serial no. 10/726,423. Claims 1, 2, 4-6, 8-10, 13, 14, 16, 17, 19-22, 24, 26-28, 30-33, 37-38, 40, and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0199765 to Kohane et al. (hereinafter "Kohane") in view of U.S. Patent No. 4,588,991 to Atalla (hereinafter "Atalla") and U.S. Patent Application Publication No. 2003/0002668 to Graunke et al (hereafter "Graunke"). Claims 3, 7, 18, 25 and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kohane in view of Atalla and Graunke and further in view of U.S. Patent No. 6,789,195 to Prihoda (hereinafter "Prihoda"). Claims 11, 12, and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kohane in view of Atalla and Graunke and further in view of U.S. Patent Application Publication No. 2004/0068650 to Resnitzky (hereinafter "Resnitzky"). Claims 35 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kohane in view of Atalla, Graunke, Prihoda and Resnitzky.

The undersigned representative wishes to thank the Examiner for the interview conducted on June 24, 2010. At the interview, the Examiner provided some guidance on claim amendments to distinguish the cited art. Those recommendations have been incorporated herein.

Rejection of Claims 1, 16, 22, and 30 under 35 U.S.C. §112, 2nd paragraph

Claims 1, 16, 22, and 30 have been amended to more particularly recite the objected to limitation. The undersigned submits that these claims are definite.

Provisional Rejection of Claims 1-22, 24-28, and 30-44 for Non-Statutory Double Patenting

The Examiner maintains the provisional rejection under non-statutory double patenting. Although the undersigned representative continues to rebut this provisional rejection for the

reasons previously set forth, upon an indication of allowable subject matter, the undersigned representative will consider the filing of a terminal disclaimer and/or continue to rebut the provisional rejection. The undersigned representative notes, however, that claims 39 and 41-43 have been canceled, thereby rendering the rejection to those claims moot.

Rejection of Claims 1, 2, 4-6, 8-10, 13, 14, 16, 17, 19-22, 24, 26-28, 30-33, 37-38, 40, and 44 under 35 U.S.C. §103(a) in View of Kohane, Atalla and Graunke

As previously recognized by the Office, Kohane does not teach generating a second-level key by modifying the first-level key. The Office has removed Knapton as a reference and is now applying two additional references in combination with Kohane in an effort to establish a *prima facie* case of unpatentability. Each reference is addressed herein.

The portions of Atalla which discuss “key codes” are referring to specific encryption codes for encrypting/decrypting file information. These key codes have nothing to do with user authorization or level of access that a particular user has been granted. New key codes are generated and applied to the file when access parameters relating to the file have been met, e.g., a new key code is generated each time the file is accessed. These key codes are completely separate from user access-authorization processes and files which set rules for user access to the file (or different content within the file). Accordingly, contrary to the Office’s assertion, Atalla does not disclose or even suggest generation of a second level key by modifying the first level key. In fact, as stated in column 3, lines 45-49, the key codes are randomly generated using a random-number generator and thus have no relation to one another; they are merely “file-protect codes.” Atalla merely teaches generating a new key code for decrypting a file each time the file has been accessed (not based on modification by a user as suggested in the Office Action), there is simply no reference to level access.

Referring to Graunke, the undersigned submits that the digital content protection scheme described therein has no relation to granting various levels of access to particular information, e.g., to different types of medical information, by a patient to different entities, e.g., medical providers. Graunke is protecting content in a different sense in accordance with technical attributes such as resolution, frame rate, number of copies, number of simultaneous users, or size of computer. The invention and the reference are not in the same field of endeavor since the problem of third-party medical information access controlled by patient is a different problem from protecting the security of content in accordance with technical capabilities of the subscriber

environment. *See Icon Health & Fitness, Inc.*, 496 F.3d 1374. Further, Graunke does not teach the claim language as Graunke requires separate individual keys for different individual levels of content access. *See* paragraph [0058] (“Once all appropriate keys have been generated, content may be accessed by applying a key to its corresponding section.”). In contrast thereto, the claims generate a second level access key based on the first level access key and the second level access key replaces the first level access key; there are not separate keys for accessing separate medical information. Further still, the generation of the lower level access keys in Graunke is not initiated by a change in access rights granted by the content owner (patient) as required by the claims, but instead occurs automatically at the subscriber. *See* paragraphs [0027], [0030] - [0033].

Therefore, the undersigned submits that the Office has not established a *prima facie* case of unpatentability since the cited references, either alone or in combination, do not teach each and every element as recited in claims 1, 2, 4-6, 8-10, 13, 14, 16, 17, 19-22, 24, 26-28, 30-33, 37-38, 40, and 44. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Rejection of Claims 3, 7, 18, 25 and 34 under 35 U.S.C. §103(a)

Because independent claims 1, 16, and 22 are believed to be allowable, claims 3, 7, 18, and 25 are also believed to be allowable for at least the reason that they depend on claims 1, 16, and 22. Prihoda fails to cure the deficiencies of Kohane, Atalla and Graunke. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Rejection of Claims 11, 12 and 15 under 35 U.S.C. §103(a)

Because independent claim 1 is believed to be allowable, claims 11, 12, and 15 are also believed to be allowable for at least the reason that they depend on claim 1. Resnitzky fails to cure the deficiencies of Kohane, Atalla and Graunke. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Rejection of Claim 35 and 36 under 35 U.S.C. §103(a)

Because independent claim 30 is believed to be allowable, claims 35 and 36 are also believed to be allowable for at least the reason that they depend on claim 30. Prihoda and

Resnitzky fail to cure the deficiencies of Kohane, Atalla and Graunke. Therefore, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

The undersigned representative respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution might be advanced by discussing the application with the undersigned representative, in person or over the telephone, we welcome the opportunity to do so. In addition, if any additional fees are required in connection with the filing of this response, the Commissioner is hereby authorized to charge the same to Deposit Account 50-4402.

Respectfully submitted,

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